

NAPA BERRYESSA RESORT IMPROVEMENT DISTRICT

ROBERT J. PETERSON, P.E.
District Engineer

DONALD G. RIDENHOUR, P.E.
Assistant District Engineer

September 29, 2006

Ms. Pamela C Creedon, Executive Officer
California Regional Water Quality Control Board
Central Valley
11020 Sun Center Drive, #200
Rancho Cordova, CA 95670-6114

RE: Draft Cease and Desist Order,
Napa Berryessa Resort Improvement District, Napa County
Wastewater Treatment System

Dear Ms. Creedon:

The Napa Berryessa Resort Improvement District understands the seriousness of the Draft Cease and Desist Order ("Draft C&D") and had already begun and is continuing to expedite its revamping the district's sewer facilities to deal with the capacity issues noted in as existing, primarily in the winter time, in the wastewater disposal and storage components of the facility. However, as written there are certain portions of the Draft C&D that create considerable concern to District Management and will have a devastating effect on some of the individual landowners in the District. The purpose of this letter is to outline the District's concerns with the Draft C&D, to recommend that certain of the language be modified prior to inclusion in the final Order, and to recommend that provision be made in the final Order by the Central Valley Regional Water Quality Control Board to exclude from those heavily impacted landowner's modest pending projects from the proposed building moratorium.

On September 27, 2006, District staff met with Regional Board staff to discuss these issues associated with the Draft C&D. The discussion included the District's concerns regarding the hardships caused by inclusion in the proposed building moratorium of a small number of parcels for which building permit applications on file at the Napa County Building Department were near or at the point of permit issuance when the Notice of Hearing was filed. The discussion also included the repeated and inaccurate statements in the Draft C&D that the District has not done anything to correct violations noted by Regional Board staff to have occurred since 1996. Finally, the discussion included the steps already undertaken and ongoing by the District, as evidenced by its development of a Master Facilities Plan, to bring the District into compliance with all applicable Waste Discharge Requirements to enable the lifting of the proposed sewer connection ban at the earliest possible time for landowners generally within the District.

At this meeting, the Regional Board staff recommended that the District, in their written response, request the Regional Board to consider individual exceptions to the ban for the pending building permits, address the accuracy of the facts listed in the Draft C&D and identify any other specific concerns the District has regarding the content of the C&D.

I. Request to Exclude Certain Projects from the Proposed Building Permit Moratorium

The Draft C&D states that the reason for the proposed sewer connection ban is because the District has been reporting average daily flows within the disposal and storage components of the sewage system which are greater than the 50,000 gallons per day allowed by their WDRs, although with the parcels within the District at significantly less than full buildout the actual average daily flows have not in fact resulted any appreciable impairment of the water resources in the vicinity or in Lake Berryessa itself.

While it is undisputed that the District is receiving and processing average daily flows above what is allowed in the WDRs, the primary cause of the problem appears to be infiltration and inflow (I&I) of rainwater and related groundwater into the District's sewer collection system.

The applicable state regulations relating to imposition of prohibitions or restrictions on additional discharges to community sewer systems (i.e., a moratorium on new connections) provide that the purpose of such limitations:

"is to prevent an increase in violation or likelihood of violation of waste discharge requirements during a period of violation or threatened violation of requirements and thereby to prevent an increase in unreasonable impairment of water quality or an increase in nuisance." (23 California Code of Regulations Section 2244(a), emphasis added)

In the current situation with the capacity exceedences noted in the Draft C&D, the main cause of this violation is I&I. The volume of the I&I is determined solely by the condition of the collection pipes and the amount of rainfall and groundwater, a problem which the District is in the process of correcting. The new connections associated with the pending building permit applications will not be adding any new stretches of damaged pipeline to the existing sewage collection system and they will result in expedited repairs to any such damage in the existing mains in the vicinity of the new connections at the time the new laterals are built, with the landowner's connection fees helping to fund the cost of those spot repairs.

The small number of pending permits and the modest nature of the proposed projects means that any additional effluent added to the system by these few projects would be de minimis in view of the already existing I&I flows and perhaps even fully offset by the spot repairs of existing pipelines facilitated by the connection process. The applicable regulations require restrictions on new connections only if the further addition in volume, type or concentration of the waste entering the sewer system would itself cause an increase in the violation or likelihood of the waste discharge requirements. (23 California Code of Regulations Section 244(b)). That is not the case with the pending projects proposed for exclusion.

The District therefore believes that the evidence shows that allowing the connection of this relatively small number of homes to proceed while the overall I&I problem is being corrected would have little or no net impact on the system. Specifically, at the time the Notice of Hearing was filed there were 12 pending building permits for new homes within the District. The Assessor's Parcel Numbers of the affected lots are as follows:

Building Permit Application No.	Assessor's Parcel No.
B04-00207	019-372-003
B06-01305	019-382-007
B02-00533	019-392-002
B06-01374	019-392-010
B06-01338	019-402-020
B06-01142	019-421-007
B04-00282	019-451-012
B06-01258	019-451-014
B02-00105	019-461-006
B04-01071	019-483-003
B05-01133	019-491-007
B06-01004	019-493-016

Under these circumstances, the District believes that the regulatory purpose for new connection limitations set forth in 23 California Code of Regulations Section 2244 (a) and (b) would not be served by including the pending projects on the above-noted parcels in the proposed new connection ban.

Furthermore, if the purpose of such limitations would not be served by including these projects, then continuing to include them in the final C&D Order could only be viewed as a punitive measure for the District's alleged past failures to comply in all details with the WDRs applicable to the District's water and wastewater systems. The applicable state regulations prohibit connection limitations or restrictions from being used only for punitive reasons. (See 23 California Code of Regulations Section 2244(c)),

For all of these reasons, the District requests the Regional Board to include in the final C&D Order exclusion from the new connection ban of the pending building permits for the above parcels.

II. Request for Removal of Irrelevant Material from the Final Cease and Desist Order

Because a connection moratorium must, under the subsections of 23 California Code of Regulations cited above, serve the purpose of preventing an increase in the existing violations or in increase in unreasonable impairment of water quality or nuisance (i.e., actual pollution of drinking water), and cannot be used as a punitive measure for past failures to comply with WDR conditions, the District believes that only the following items in the Draft C&D are relevant to the moratorium remedy sought to be imposed. The District therefore requests the Regional

Board to state that only the following items in the "Previous Enforcement" (Items 6 through 12) and "Violations of WDRs and C&D Orders" (Items 14 through 48), corrected as shown below, are relevant to and supportive of the connection moratorium being imposed by the final Cease and Desist Order, and that all other items in these sections, corrected as shown in Part III of these Response, are not relevant to or legally supportive of the request for the moratorium:

Item 23, under 'Spill Violations' that states:

'On 21 March 2006, following an 8 December 2005 site inspection the Discharger was issued a NOV for not adequately implementing tailwater controls to prevent wastewater runoff to surface waters. It is assumed that wastewater runoff from the land disposal areas occurs in the winter, however the Discharger is not reporting this information.'

Although the above statement refers to tailwater control, the NOV issued to the District on March 21, 2006 identified three violations, none being tailwater control. The District does not deny that the actual operation of the disposal field does not always comply with their WDRs; however, the actual procedure used in the winter in fact significantly reduces the probability of discharges to surface waters. This is demonstrated by the fact the District has not experienced a surface water discharge from the disposal field since 1996, and therefore, the current capacity violations have not and are not anticipated to have any potential to impair water quality or cause nuisance (pollution). Therefore the District requests that the Regional Board staff rewrite the statement as follows:

'On 21 March 2006, following an 8 December 2005 site inspection the Discharger was issued a NOV for not adequately certain controls originally imposed to prevent wastewater runoff to surface waters.'

Item 24, under 'Flow Violations' that states:

'Discharge Specification No. B.I of WDRs Order No. 95-173 states: "The monthly average discharge shall not exceed 50,000 per day." Regional Water Board Staff's review of monthly monitoring reports submitted between July 2000 and March 2006 indicates that the average monthly discharge has ranged from 26,367 gallons per day (gpd) to 153,724 gpd. During this period, the monthly average discharge exceeded 50,000 gpd for 48 months.'

III. Request for Deletion or Correction in the Final Cease and Desist Order of Inaccuracies in Historical Violation Recitations in the Draft C&D

The corrections of the facts listed in the C&D are meant to clarify the history of the District and are not intended as argument with the general intent of the Draft C&D. The District realizes that it has experienced violations of its WDRs and is committed to correcting them to not only comply with regulation, but to secure their future of providing water and wastewater services to their community. Additionally, the District would like the history to include those corrective

actions requested by the Regional Board and staff in the past, which have been complied with by the District.

The District expressed its concerns at the September 27th meeting with Regional Board staff regarding the wording of the historical summary. Regional Board staff recommended that the District respond to the perceived inaccuracies, and provide suggested replacement language for the Regional Board to consider in the Final C&D Order. Therefore, the following are factual corrections and suggested rewrites for clarification presented by the District for the Regional Board's consideration.

Paragraph 3 of the 'Wastewater Treatment Facility' section of the C&D, a portion of the paragraph states:

"...As of 2005, the Berryessa Highlands Subdivision consisted of 330 Equivalent Dwelling Units (EDUs) and the Steel Park Resort consisted of 140 EDUs. At full buildout, the maximum number of connections swerved by WWTF will be 635 EDUs at the Berryessa Highlands Subdivision and 140 EDUs at Steele Park Resort."

The actual total number of EDUs that can connect to the system is 562. This number is derived from accounting for all lots within the District Boundary that are assessed an availability charge for the District's facilities. Additionally, the Steele Park Resort consists of a total of 228 EDUs.

Paragraph 5 of the 'Wastewater Treatment Facility' section of the C&D, a portion of the paragraph states:

"... The Zone No. 1 land application area is located on a hillside above a tailwater pond. The other zones are also located on the hillside, however they do not directly drain into the tailwater pond..."

While only Zone 1 spray field is designed to drain directly into the tail water pond, the other spray field zones are designed to indirectly drain into the tail water pond. Spray field zones 2, 3 & 4 are designed to drain towards catchment ditches that divert any disposal spray runoff to the tail water pond. Perhaps the Regional Board staff would consider revising the statement as follows:

"The Zone No. 1 land application area is located on a hillside above a tailwater pond. The other zones are also located on the hillside above catchment ditches that drain to the tailwater pond."

Paragraph 12 of the 'Previous Enforcement' section of the C&D indicates that dried sludge from a pilot study remains in a pile on the Zone No. 1 land application area. The District is currently in the process of removing the sludge and will provide a report to the Regional Board upon completion of the sludge removal.

Paragraph 21 of the 'Violations of WDRs and C&D Orders' subsection of 'Spill Violations' states:

"On 29 January 2003, the Discharger was issued a Notice of Violation (NOV) for a domestic wastewater overflow estimated at approximately 1,000 gallons. The spill was

related to a power outage, a non-operational phone system, and a backup emergency generator not being turned on by the operator following the overflow."

As discussed during the meeting with Regional Board staff on September 27, 2006, the above violation was issued in error to the District. The site of the reported violation was located at a different wastewater system on Lake Berryessa. Regional Board staff indicated in the meeting that the above violation would be deleted from the District's record and the proposed C&D.

Paragraph 23 of the 'Violations of WDRs and C&D Orders' subsection of 'Spill Violations' states:

"On 21 March 2006, following an 8 December 2005 site inspection the Discharger was issued a NOV for not adequately implementing tailwater controls to prevent wastewater runoff to surface waters. It is assumed that wastewater runoff from the land disposal areas occurs in the winter, however the Discharger is not reporting this information."

The Notice of Violation referenced above was not issued for inadequately implementing tailwater controls to prevent wastewater runoff to surface waters as stated. Rather the Notice of Violation was issued for 1) Sludge continues to be stockpiled within the Zone 1 spray field, 2) The sludge being stored in the pond does not meet requirements of Chapter 15, Division 3, Title 23, of the California Code of Regulations and 3) Daily monitoring of the spray disposal field and reporting of those results in the monthly monitoring reports is not being conducted as per requirements of the Revised Monitoring and Reporting Program. The tailwater issue that Board staff refers to in the Inspection Report containing the Notice of Violation was in fact speculation based on observation of storm water runoff in a spray irrigation zone that was not in use.

The District does not deny that in the past runoff from the disposal areas did enter surface waters, however, according to Regional Board and District records, discharges from the disposal area to surface waters has not occurred since 1996. The reason no discharges have occurred is due to the constant operation of the zone 1 spray field during winter events. Zone 1 is the only spray field zone that drains directly into the re-circulation/ tailwater pond. During storm events, the zone is continuously irrigated and any and all runoff is collected in the re-circulation/tailwater pond and reintroduced into the Zone 1 irrigation system through a pump station and wastewater storage tank. This cycle of spraying, collecting and reintroducing treated effluent into the irrigation system in Zone 1 enables the District to keep the treated effluent away from surface waters, and contained on the disposal site. We realize that operating the disposal system in this manner is a violation of the District's WDRs, however, the District believes it is following the direction of Cease and Desist Order No. 96-232, under Item 2 of the Order which states: "The District shall maximize the use of land disposal to further ensure that spills are limited to the maximum extent possible." The District believes that the winter operation of Zone 1 is consistent with that order. There for the District request that the Regional Board staff rewrite the statement as follows:

'On 21 March 2006, following an 8 December 2005 site inspection the Discharger was issued a NOV for not adequately certain controls originally imposed to prevent wastewater runoff to surface waters.'

Paragraph 25 of the 'Violations of WDRs and C&D Orders' subsection of 'Spill Violations' states:

"Discharge specification No. B.3 of the WDRs states: "As a means of discerning compliance with Discharge Specification No. B.3, the dissolved oxygen content in the upper zone (1 foot) of wastewater ponds shall not be less than 1.0 mg/L." Monthly self-monitoring reports from July 2000 through November 2005 indicate that dissolved oxygen measurements in the lined effluent holding basins was less than 1 mg/L on numerous occasions."

According to the District's current WDRs and the 1995 Monitoring and Reporting Program (MRP) which covered the years 2000 through early 2004, the District was not required to submit dissolved oxygen measurements of the lined effluent holding basins to the Board in the monthly self monitoring reports. The District was however reporting dissolved oxygen levels for the wastewater treatment facility's aeration basin and clarifier. Therefore, the statement above regarding the District having dissolved oxygen levels in the ponds below 1.0 mg/L is not accurate. The dissolved oxygen levels that Board staff refers to were the dissolved oxygen levels in the wastewater treatment facility's aeration basin and clarifier.

In 2004 the Board issued a new MRP that required the District to monitor and report dissolved oxygen levels in the effluent holding basins on the monthly self monitoring reports. In April of 2005, the District began reporting these measurements and has been as of September 28, 2006. During the reporting period the dissolved oxygen levels in the effluent holding ponds has been consistently above 1.0 mg/L.

Paragraph 30 of the 'Violations of WDRs and C&D Orders' subsection of 'Pond Monitoring Violations' states:

"On 25 October 2004, the Discharger submitted a report indicating that application of herbicide by Napa County Mosquito Abatement Control District did not include direct treatment of the duckweed. The report also stated that the tailwater pond would be monitored biannually for the presence of duckweed and that when the duckweed covered approximately 50 percent of the pond surface then the duckweed would be manually removed."

The District has implemented the biannual monitoring and has not had an inundation of duckweed in the tailwater pond since late 2004. The biannual monitoring not only consists of visual inspection of the pond, it includes application of herbicide onto the banks of the pond by the Napa County Mosquito Abatement Control District.

Paragraphs 31 and 32 of the 'Violations of WDRs and C&D Orders' subsection of 'Land Application Area Violations' states:

31: Discharge Specification No. B.14 of WDRs Order No. 95-173 states: "The Discharger may not spray irrigate effluent during periods of precipitation and for at least 24 hours after cessation of precipitation or when winds exceed 30 mph."

32: The Discharger has been in violation of Discharge Specification No. B.14 on numerous occasions. For instance, monthly self-monitoring reports from December 2005 through March 2006 shows that rainfall occurred a total of 46 days and that the Discharger applied wastewater to the land application areas via spray irrigation everyday during those months.

As stated above within the comments for Paragraph 23, the District does not deny that it has utilized its spray fields during times of precipitation. However, the only spray field used in these instances has been the spray field in Zone I. The Zone I spray field is the only zone that directly drains into the recirculation/tailwater pond. Utilizing this spray field during precipitation events, the District is able to re-circulate all wastewater such that no runoff enters any surface waters. While as stated above this is a violation of the District's WDRs, this practice is consistent with the Regional Board staff's directive in the Cease and Desist Order No. 96-232 as stated in the comments for Paragraph 23.

Paragraph 38 of the 'Violations of WDRs and C&D Orders' subsection of 'Reporting Violations' states:

"A 23 February 1999 letter from Regional Water Board staff states that monthly self monitoring reports as required by the WDRs were not being submitted according to the time schedules in the Order. In addition, the letter also stated that quarterly progress reports as required by the C&D Order were not being submitted."

The statement fails to indicate that since the letter dated February 23, 1999, the District has submitted the self monitoring reports as required by the WDR in accordance with the time schedules in the Order. The failure to include the previously noted statement presents the false impression that the District is still in violation of this requirement.

Paragraph 39 of the 'Violations of WDRs and C&D Orders' subsection of 'Reporting Violations' states:

"On 11 March 2004, Regional Water Board staff conducted a site inspection of the facility and identified that the Discharger was not reporting freeboard measurements in the tailwater pond as required by the Monitoring and Reporting Program (MRP)."

As discussed with Regional Board staff at the meeting on September 27, 2006, the MRP is set up in such a way that the District was not aware it was required to take freeboard measurements of the tailwater/re-circulation pond. This is evident in the MRP itself as the monitoring requirement specified in the MRP for the Disposal Area (page 2 and 3 of the MRP) did not include provisions for the monitoring of the tailwater/recirculation pond. The actual Pond Monitoring requirement from the MRP (page 2 of the MRP) was directed to the three treatment ponds at the District's wastewater facility. The District has complied with the pond monitoring requirement from the

MRP as it is written, and now that the District is aware that monitoring of the tailwater/ recirculation pond is required, it will begin doing so immediately.

Paragraphs 42 and 44 of the 'Violations of WDRs and C&D Orders' subsection of 'Reporting Violations' states:

42: On 23 July 2004, the Executive Officer issued a California Water Code (CWC) 13267 Order for the non-submittal of the technical reports. The CWC 13267 Order required the Discharger to submit a report that documents removal of vegetation within and around the tailwater pond by 1 September 2004...

44: On 25 October 2004, the Discharger submitted a report stating that an herbicide applied by the Napa County Mosquito Abatement Control District (NCMQCD) had been applied to the immediate area of the tailwater pond. However, the Discharger indicated that the herbicide application did not control the duckweed and that mechanical skimmer device would be installed. The Discharger also stated that a manual duckweed management plan would be implemented where the tailwater pond would be monitored biannually for the presence of duckweed. The Discharger indicated that when approximately 50 percent of the tailwater pond is covered with duckweed, manual removal would be performed.

See comment for Paragraph 30. The biannual monitoring of the re-circulation/tailwater pond has been in effect since late 2004. Since that time, the re-circulation/tailwater pond has been clear of duckweed as per the District's WDRs. Again, the statement as written presents the false impression that the District has not complied with this directive from the Regional Board staff, when in fact the District has been in compliance since November 2004.

Paragraph 46d of the 'Violations of WDRs and C&D Orders' subsection of 'Master Plan Study Recommendations' states:

"The Master Plan Study states that there have been intermittent violations of Discharger Specifications Nos. B.15 and B.16 of the WDRs since the runoff collection ditch at times is used to bypass the tailwater pond during the winter months. The Master Plan Study also states that the only options for the Discharger are to seasonally store the effluent in a large pond or construct a subsurface disposal field."

The District does not deny that in the past, runoff from the collection ditch has bypassed the tailwater pond during the winter months. However, the District has not bypassed the collection ditch since last reported in 1996. This is due to the fact that, as stated above in the comments for paragraphs 23, 31 and 32, the District only utilizes spray irrigation zone 1 during the winter months which does not drain into the collection ditch, rather it drains directly into the tailwater/recirculation pond for recirculation into spray irrigation zone 1.

IV. Conclusion


The District realizes the seriousness of the past C&D and proposed C&D and is prepared to fully comply with them and their WDRs. The District has begun the process to revamp their facilities by having a Master Facility Plan prepared to identify, prioritize and cost estimate capital improvement projects, which was completed in June 2006. The projects identified shall bring the District into full compliance with all regulatory agencies as well as secure the District's future for utility services. The next steps for the District are to set in place a financing mechanism to fund the capital improvements, prepare plans and specifications and construct the project. The timelines for reports outlined in the proposed C&D shall be met and the Regional Board shall be kept apprised of the District's progress towards completion.

The District requests that the Regional Board staff include in the agenda package to the Regional Board Members the request in Part I of this letter to exclude from the sewer connection ban the specified building permits based on the presented information and consider any additional letters or testimony from the affected land owners that may be presented at the hearing in this regard. Additionally, the District requests that the Regional Board staff include the corrected facts above and revise their proposed C&D to accurately reflect the District's efforts to comply with the past C&D Order No. 96-232 and their WDRs.

The District is appreciative for the chance to respond to the draft C&D and request opportunity to clarify any questions that Regional Board staff may have.

Sincerely,

ROBERT J. PETERSON, P.E.
District Engineer

By: 
Nathan J. Galambos
Principal District Engineer

cc: Mr. Jack DelConte – Principal WRCE, RWQCB Central Valley Region
Ms. Wendy Wyles – Environmental Program Manager, RWQCB Central Valley Region
Mr. Mark List – Senior Engineering Geologist, RWQCB Central Valley Region
Mr. Guy Childs – Engineering Geologist, RWQCB Central Valley Region
Napa Berryessa Resort Improvement District Board of Directors
Nancy Watt – Napa County Executive Officer
Robert Westmeyer – Napa County Counsel
Margaret Woodbury – Chief Deputy County Counsel
Janice Killion – Deputy County Counsel
Robert Peterson – District Engineer
Don Ridenhour – Assistant District Engineer
Tim Lanphear – District Supervising Operator
Steve Lederer – Director of Environmental Management